SBCivil Writ Petition No.621/1995

A.13939163 NK/AA S.K.Singh
v.
Union of India & Ors.

DATE OF ORDER :: 19th January, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. V.S.Sankhla for the petitioner.
Mr. Ravi Bhansali]
Mr. Pankaj Bohra] for the respondents.

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The petitioner while holding the post of Nayak was considered for promotion to the post of Hawaldar against the vacancy pertaining to the year 1993. The promotion was denied to the petitioner on the count that he was not having required standard of ACRs for the years 1991, 1992 and 1993. Being aggrieved by the same this petition for writ is preferred.

It is contended by counsel for the petitioner that a minor punishment was imposed upon him by letter dated 23.12.1992 but that was subsequently set aside on 25.12.1993. It is stated that the respondents did not revise the ACRs after getting the minor punishment set aside. It is further sated that the average ACRs were never communicated to him though those were taken into consideration by the respondents while considering candidature of the petitioner for the purpose of promotion to the post of Hawaldar.

In reply to the writ petition the stand of the respondents is that the ACRs grades earned by the petitioner were not according to the criteria laid down requisite for the purpose of promotion to the post of Hawaldar. According to the respondents in view of the circular dated 23.8.1984 issued by Army Headquarters in case of three and more reports atleast two reports should be high average and above including the latest one for the purpose of promotion of a Nayak to the post of Hawaldar. The details with regard to the ACRs of the petitioner as given by the respondents in their reply reads as under:-

Year	Grading	Recommendation for further promotion	Initiated by
1990	High Average	Recommended	153 GH
1991	Average	Recommended	153 GH
1992	Average	Recommended	412 FD Amb
1993	Average	Recommended	412 FD Amb
1994	Average	Recommended	412 FD Amb
1995	Above Average	Recommended	162 MH

Heard counsel for the parties.

The contention of counsel for the petitioner is that the respondents while considering candidature of the petitioner have taken into consideration the ACRs pertaining to the years 1991, 1992 and 1993 those are shown as average according to the respondents. The

average ACRs are required to be treated as adverse remarks for the reason that it effects promotional avenues of the petitioner. According to the petitioner the adverse ACRs which are shown as average ACRs for the years 1991, 1992 and 1993 were never communicated and as such cannot be taken into consideration while considering the case of the petitioner for promotion. To substantiate the contention reliance is placed upon the Division Bench judgment of this Court in the case of M.K.Rajyana v. the Union of India & Ors., DBCivil Special Appeal (Writ) No.121/1998, decided on 12.5.2000, holding as under:-

> “In view of the aforesaid discussion, we are of the view that when 'very good' is the essential remark for getting promotion, any remark inferior to 'very good' would be factually adverse to a candidate as he would not remain eligible for promotion. As the object of making and communicating adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character, it is all the more necessary that a person who has to earn a 'very good' remark for being considered for promotion is told in advance that he has not received 'very good' remark. It is true that assessment about the quality of an officer is a matter of opinion formed on the basis of material available with the assessing officer and therefore, it is not for the officer who is being assessed to insist that he be assessed 'very good' but all the same in such matters from the material on record

such an officer may persuade the assessing officer that he deserved to be given 'very good' remark. To obviate these difficulties, the Supreme Court in Amar Kant Choudhary's case (supra) impressed upon the Governments the dire necessity of reviewing the present system of maintenance of confidential rolls. When the Government is not ready to take that advice seriously, the only course open to the Courts is to pass appropriate judicial orders in appropriate cases.

Having held thus, we are faced with the difficuty as to what relief should be granted to the appellant in the circumstances of this case. Obviously, our holding that the uncommunicated 'good' and 'average' remarks could not have been considered adverse against the appellant and should have been left out from consideration of his record, would be of no use because even if we direct that such uncommunicated remarks be not read into the record of the appellant, the appellant would not stand to benefit, as these remarks cannot be treated to be 'very good' remarks automatically. It is only after such 'good' and 'average' remarks are communicated and are upgraded to 'very good', on a representation by the appellant that the appellant would be entitled to promotion."

Reliance is also placed by counsel for the petitioner on a Division Bench judgment of Hon'ble Jammu and Kashmir High Court in the case of Hav Ram Singh v. Union of India & Ors., reported in Mil.LJ

2000 J & K 82. In the matter aforesaid also the Division Bench of Jammu & Kashmir High Court held that average grading in ACR is required to be treated as adverse if it effects promotional avenues of an officer.

It is not in dispute that the ACRs of the years 1991 to 1994 which are graded as average were not communicated to the petitioner. As a matter of fact the respondents in their reply took a stand that there was no need to communicate average ACRs to the employee concerned. The relevant portion of the reply to this effect reads as follows:-

> "There was no question of administering of any warning to the petitioner while raising the ACRs as the petitioner had earned average grading. The warning is only administered in case the person is assessed "below average" so that he could improve himself."

In view of the Division Bench judgment of this Court in the case of M.K.Rajyana (supra) and also in the case of Hav Ram Singh (supra) (J&K High Court) the average grading of ACRs if effects promotional avenues of an incumbent are required to be treated as adverse remarks and in such case the same is required to be communicated to the employee concerned seeking his explanation.

In the instant matter while considering candidature of the petitioner for the purpose of promotion to the post of Hawaldar uncommunicated ACRs were taken into consideration, therefore, such consideration is not objective. The respondents are required to review the same by communicating adverse remarks to the petitioner and by reviewing the same after receiving explanation from the petitioner.

Accordingly, this petition for writ is disposed of with a direction to the respondents to communicate the petitioner the adverse remarks in his ACRs those are graded average for the years 1991, 1992, 1993 and 1994. The respondents shall review the same if the petitioner submits any explanation with regard to adverse remarks. The candidature of the petitioner for the purpose of promotion against the vacancy of the year 1993 is also required to be reviewed as a consequent to the revision of the ACRs in terms above.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.